



House of Lords
House of Commons
Joint Committee on Statutory
Instruments

Twenty-Second Report of 2021–22

Drawing special attention to:

Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022 (Draft S.I.)

Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 (S.I. 2021/1237)

National Security and Investment Act 2021 (Prescribed Form and Content of Notices and Validation Applications) Regulations 2021 ((S.I. 2021/1272)

Non-Domestic Rating (Discretionary Relief) (Amendment) (England) Regulations 2021 ((S.I. 2021/1276)

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Consequential Provisions) Order 2021 (S.I. 2021/1310)

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No.26) Regulations 2021 (S.I. 2021/1463)

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Joint Committee on Statutory Instruments

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The full constitution and powers of the Committee are set out in [House of Commons Standing Order No. 151](#) and [House of Lords Standing Order No. 74](#), relating to Public Business.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

- i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- ii that its parent legislation says that it cannot be challenged in the courts;
- iii that it appears to have retrospective effect without the express authority of the parent legislation;
- iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

- v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- vii that its form or meaning needs to be explained;
- viii that its drafting appears to be defective;
- ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

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The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

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Instruments reported

At its meeting on 26 January 2022 the Committee scrutinised a number of instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to six of those considered. The instruments and the grounds for reporting them are given below. The relevant departmental memoranda are published as appendices to this report.

1 Draft S.I.: Reported for requiring elucidation

Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022

1.1 **The Committee draws the special attention of both Houses to these draft Regulations on the ground that they require elucidation in one respect.**

1.2 These draft Regulations, which were laid for approval of both Houses in accordance with the draft affirmative resolution procedure, extend the expiry date for certain amendments made by the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021 (S.I. 2021/391). The draft Regulations amend a number of other sets of Regulations. By regulations 1 and 2 of the draft amending Regulations, the amendments are limited in effect both as to territorial application and as to duration; but the text of the amendments contains no reference to those limitations. The Committee asked the Department for Levelling Up, Housing and Communities to explain whether consideration was given to drafting the amendments in a form indicating the territorial and temporal limitations, so as to avoid the creation of parallel texts of the amended legislation with different applications and durations. In a memorandum printed at Appendix 1, the Department: recognises the challenges that parallel texts create for different users of the statute book and the benefits of the text stating its application clearly; explains the reason for the drafting choices in different provisions of the draft Regulations; accepts that the drafting of the text of the amendments could have been clearer in certain respects; and undertakes to consider a different approach for future cases. The Committee is grateful for the Department's acknowledgment of the issues and on that basis **the Committee is content to report these draft Regulations for elucidation, provided by the Department's memorandum.**

2 S.I. 2021/1237: Reported for requiring elucidation

Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

2.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they require elucidation in two respects.**

2.2 These Regulations, which are subject to the negative resolution procedure, introduce new powers for trustees and managers of occupational and personal pension schemes to protect their members from scams in the exercise of those members' statutory rights to transfer pension benefits to another scheme. These powers allow trustees and managers of

transferring schemes to prevent transfers where one or more of the indicators of high scam risk have been identified (red flags) or in other circumstances (amber flags) to mandate that the member take prescribed pension transfer scams guidance.

2.3 The Regulations were laid 5 calendar days after making. It appeared to the Committee that these Regulations required a significant update to the processes of trustees and managers and therefore may be an exception to the general rule (set out in the Committee's First Special Report of Session 2017–19, *Transparency and Accountability in Subordinate Legislation* at paragraph 2.13) that, unless there are exceptional circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay. The Committee asked the Department for Work and Pensions to explain the reason for the delay. In a memorandum printed at Appendix 2, the Department sets out why it does not consider that the 5-day delay amounts to exceptional circumstances—it does not regard these Regulations as a significant update to the processes of trustees and managers as, after extensive consultation, they were built around what was largely already happening in the industry by way of due diligence. The Committee is grateful for this explanation **and is content to report the Regulations for requiring elucidation, provided by the Department's memorandum.**

2.4 Regulation 9(5)(d) states that there is an amber flag present where the trustees or managers of the transferring scheme decide that there are overseas investments included in the receiving scheme. Given that most schemes include overseas investments, it appeared to the Committee that this may result in a very large number of pension savers being required to take scams specific guidance from the Money and Pensions Service before the transfer proceeds. The Committee asked the Department to explain whether the intention of regulation 9(5)(d) is that an amber flag is present even if the scheme contains overseas investments that are only conventional low risk overseas investments. In its memorandum, the Department confirms that it is not the intention behind regulation 9(5)(d) to capture, as a scam risk indicator within the amber flag created, circumstances where there is in fact low risk of a scam. However, the Department explains that since these Regulations came into force, it has been made aware of a potential issue of too many pension transfers being caught by the amber flag in regulation 9(5)(d) and the Department is actively engaging with industry representatives to reach an understanding of the potential issue and the distinction between those overseas investments that present scam risk and those that do not. If there is an issue, the Department will consider amending the Regulations to avoid the amber flag capturing more pension transfers than is intended, whilst maintaining the policy intent of safeguarding against potential scams facilitated through certain schemes that include overseas investments. **The Committee accordingly reports regulation 9(5)(d) for requiring elucidation, provided by the Department's memorandum.**

3 S.I. 2021/1272: Reported for defective drafting

National Security and Investment Act 2021 (Prescribed Form and Content of Notices and Validation Applications) Regulations 2021

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in three related respects.**

3.2 These Regulations, which are subject to the negative resolution procedure, specify the form and content of the notifications that may be received by the Secretary of State under

the National Security and Investment Act 2021 to enable the Secretary of State to assess whether to intervene in acquisitions where risks to national security are identified. The Committee asked the Department for Business, Energy and Industrial Strategy to explain why the phrase “national infrastructure sector” (defined in regulation 2) is not used in the regulations and to explain the meaning of “national infrastructure” (in paragraph 21 of Schedule 1 and paragraph 25 of Schedule 2) and “critical national infrastructure” (in paragraph 29 of Schedule 3). In a memorandum printed at Appendix 3, the Department explains that its intention was to use the defined term “national infrastructure sector” in the three paragraphs identified by the Committee and undertakes to rectify these errors at the earliest opportunity. **The Committee accordingly reports paragraph 21 of Schedule 1, paragraph 25 of Schedule 2 and paragraph 29 of Schedule 3 for defective drafting, acknowledged by the Department.**

4 S.I. 2021/1276: Reported for failure to comply with proper legislative practice

Non-Domestic Rating (Discretionary Relief) (Amendment) (England) Regulations 2021

4.1 The Committee draws the special attention of both Houses to these Regulations on the ground that they fail to comply with proper legislative practice in one respect.

4.2 These Regulations, which are subject to the negative resolution procedure, remove the requirement for billing authorities to provide notice when revoking or varying a discretionary relief where the purpose is to comply with an international agreement. The Regulations came into force the day after they were laid before Parliament. The Explanatory Memorandum states that it was necessary for these Regulations to come into force with such short notice in order to allow billing authorities in Freeports to quickly proceed with their Freeport rate relief scheme (paragraph 3.2). The Committee asked the Department for Levelling Up, Housing and Communities to explain precisely why the instrument could not have been made earlier in order to comply with the 21-day rule.

4.3 In a memorandum printed at Appendix 4, the Department explains that whilst the Government has been working towards the designation of Freeports for several months, the potential issue of a billing authority not being able to remove or vary a discretionary relief that was in breach of an international agreement without giving notice was not identified until recently. The Committee does not in general accept internal reasons as justification for breaching the 21-day rule, as opposed to unexpected external factors, and reiterates the importance of adherence to the rule (see paragraphs 2.15 to 2.22 of its special report *Transparency and Accountability in Subordinate Legislation*). Departments should not assume that, when the timetable is under pressure because of issues identified late or for other internal reasons, they can simply compromise on the public’s rights to see new law as soon as reasonably practicable after it is made and to have at least the minimum 3-week period to prepare for its commencement. **The Committee accordingly reports these Regulations for failure to comply with proper legislative practice.**

5 S.I. 2021/1310: Reported for defective drafting

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Consequential Provisions) Order 2021

5.1 **The Committee draws the special attention of both Houses to this Order on the ground that it is defectively drafted in one respect.**

5.2 This Order, which is subject to the negative resolution procedure, makes provision in consequence of the Redress for Survivors (Historic Child Abuse in Care) (Scotland) Act 2021 which establishes a scheme of financial redress and related support for survivors of historical child abuse in relevant care settings in Scotland. Article 2 in effect validates contributions made to the scheme by charities in England and Wales. The Committee asked the Office of the Secretary of State for Scotland to explain why article 2 makes no provision for a necessary link between the activities of a charity and the care of children at the time of abuse. In a memorandum printed at Appendix 5, the Department explains that the incentive for an organisation to contribute to the scheme is to be included in the list of scheme contributors established and maintained under section 14 of the 2021 Act; an organisation which is added to that list gains the benefit of a waiver from relevant civil proceedings brought by recipients of redress payments. The Department argues that only those organisations that are at risk of having relevant civil proceedings brought against them are likely to make financial contributions to the scheme and that as the contribution must be made before an organisation can be assessed for the purposes of becoming a scheme contributor under section 14, charities must therefore have sufficient vires to make the contribution prior to that assessment. The Department asserts that this provides sufficient nexus between the provisions of article 2 and historical abuse in care. The Committee finds this explanation difficult, primarily because if the Department were right that these payments were already *intra vires*, there would appear to be no need for the validating provisions of article 2. For that reason alone, article 2 should have contained a link between the activities of a charity and the care of children at the time of abuse. **The Committee accordingly reports article 2 for defective drafting.**

6 S.I. 2021/1463: Reported for requiring elucidation

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No.26) Regulations 2021

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

6.2 These Regulations, which are subject to the negative resolution procedure, remove the obligation on certain groups of travellers who are not required to take a day 2 PCR test (namely children under 5 and persons unable to take a test by reason of a disability) to automatically self-isolate for 14 days provided they are travelling with another person who is required to take a day 2 PCR test (the accompanying traveller). Where this applies those groups will be able to cease self-isolating when the accompanying traveller receives their test result. The Committee asked the Department of Health and Social Care to explain why, in regulation 4(3)(a) (inserted paragraph (a)), the accompanying traveller can only cease to self-isolate when notified that “the result of the day 2 test....is negative”, but a

relevant child or a person who is unable to take a test due to a disability can cease to self-isolate when the accompanying traveller is notified “of the result of that test” (apparently irrespective of the result). In a memorandum printed at Appendix 6, the Department explains that it is the intention that children under 5 and persons unable to take a test by reason of a disability would be released from self-isolation irrespective of the result of the accompanying traveller’s test result but only because the public health purpose of self-isolation is achieved through the requirements placed upon persons in those groups as a person in the same household or close contact of the accompanying traveller. (The Committee notes that regulation 8(2) of the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) Regulations 2022 has since revoked these provisions.) **The Committee accordingly reports regulation 4(3)(a) for requiring elucidation, provided by the Department’s memorandum.**

Instruments not reported

At its meeting on 26 January 2022 the Committee considered the instruments set out in the Annex to this Report, none of which was required to be reported to both Houses.

Annex

Draft Instruments requiring affirmative approval

Draft	Divorce, Dissolution and Separation Act 2020 (Consequential Amendments) Regulations 2022
Draft	Immigration and Nationality (Fees) (Amendment) Order 2022
Draft	Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2022
Draft	Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2022
Draft	Waste and Agriculture (Legislative Functions) Regulations 2022
Draft	Guaranteed Minimum Pensions Increase Order 2022
Draft	Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022
Draft	Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2022
Draft	Social Security Benefits Up-rating Order 2022
Draft	Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2022

Instruments subject to annulment

S.I. 2021/1348	Education (Student Fees, Awards and Support) (Amendment) (No. 3) Regulations 2021
S.I. 2021/1353	Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Office for Environmental Protection) Regulations 2021
S.I. 2021/1357	Littering From Vehicles Outside London (Keepers: Civil Penalties) (Amendment) Regulations 2021
S.I. 2021/1358	Import and Export Licensing (Miscellaneous Amendments) Regulations 2021
S.I. 2021/1370	Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) (EU Exit) Regulations 2021
S.I. 2021/1378	Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2021

- S.I. 2021/1379** Coroners (Inquests) (Amendment) Rules 2021
- S.I. 2021/1395** Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (Amendment) Regulations 2021
- S.I. 2021/1396** Common Organisation of the Markets in Agricultural Products (Marketing Standards and Organic Products) (Transitional Provisions) (Amendment) Regulations 2021

Draft Instruments subject to annulment

- Draft** Bury (Electoral Changes) Order 2022
- Draft** Gosport (Electoral Changes) Order 2022

Instruments not subject to parliamentary proceedings not laid before Parliament

- S.I. 2021/1362** Reservoirs Act (Panels of Civil Engineers) (Applications and Fees) Regulations 2021
- S.I. 2021/1373** Trade Union Act 2016 (Commencement No. 4 and Transitional) Regulations 2021
- S.I. 2021/1377** Electronic Communications (Universal Service) (Costs) (Amendment) Regulations 2021
- S.I. 2021/1394** Pension Schemes Act 2021 (Commencement No. 5) Regulations 2021

Appendix 1

Draft S.I.

Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022

1. The Committee has asked the Department for Levelling Up, Housing and Communities for a memorandum on the following point:

Explain what consideration was given to drafting the amendments of legislation made by these Regulations in a form indicating the territorial and temporal limitations imposed by regulations 1 and 2, so as to avoid the proliferation of parallel texts.

2. The Department acknowledges the complex nature of elections legislation, including the Representation of the People (England and Wales) Regulations 2001 and its Scottish equivalent, the Representation of the People (Scotland) Regulations 2001 (together “the 2001 Regulations”). This has been exacerbated by further devolution of elections matters, leading to amendments being made to the 2001 Regulations by the UK, Scottish and Welsh Ministers in recent years which have resulted in parallel texts. The Department recognises the challenges that parallel texts create for different users of the statute book and the benefits of the text stating clearly on its face its application. The Department has also had regard to the Committee’s views in this area on other elections related legislation (see for example the Forty-First Report of Session 2019–2021.)

3. Turning to the territorial application of the amendments to be made by the draft Representation of the People (Proxy Vote Applications) (Coronavirus) (Amendment) Regulations 2022 (“the draft Regulations”), regulation 3 amends regulation 56 of the Representation of the People (England and Wales) Regulations 2001 (“the England and Wales Regulations”). The amendments amend provisions of the England and Wales Regulations to resolve ambiguity created by coincidental amendments made by the UK Parliament and the Welsh Parliament in parallel in 2021, and to remove reference to medical classifications that are not currently in use. These provisions already contain express provisions which indicate their territorial application (see for example regulation 56(2A)). The Department therefore reached the view that the application of regulation 56 (including as amended by the draft Regulations) was clear on the face of that regulation and that it would be unwieldy in drafting terms for the amendments being made by the draft Regulations to restate their application.

4. The Department accepts that drafting could have been clearer that amendment to regulation 56(3AA)(b) applied only to Parliamentary elections and local government elections in England, and not to local government elections in Wales.

5. In relation to the amendments made by regulation 4, the amendments amend provisions of the Representation of the People (Scotland) Regulations 2001 (“the Scotland Regulations”) by removing reference to medical classifications that are not currently in use. Regulation 56(2A) already contains express provision to the effect that it applies only

to Parliamentary elections, and application of 56(2B) applies only to proxy applications made under regulation 56(2A). On this basis, the Department took the view that the application of regulation 56(2B) was clear on the face of that regulation.

6. The Department accepts that drafting could have been clearer that amendment to regulation 56(3B)(b) applied only to Parliamentary elections and not to local government elections in Scotland.

7. In relation to the temporal application of the amendments to be made by the draft Regulations, regulation 2 provides that the amendments made by regulations 3 to 5 cease to have effect on 28th February 2023.

8. The Department considered whether to make express provision on the face of the amended legislation indicating the temporal limitations imposed by regulation 2, but as the 2022 Regulations were primarily extending the period during which the amendments made by the Representation of the People (Proxy Vote Applications) (Coronavirus) Regulations 2021 have effect, we followed the approach taken in the 2021 Regulations, which we considered to be clear from the context.

9. The Department appreciates that it could perhaps have been clearer on the face of the amendments made by the 2021 Regulations (and therefore the 2022 Regulations) about their time-limited nature, and will take this into account in any future similar situations.

Department for Levelling Up, Housing and Communities

18 January 2022

Appendix 2

S.I. 2021/1237

Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

1. The Committee has asked the Department for Work and Pensions for a memorandum on the following points:

1. Given the significant update to the processes of trustees and managers required by this instrument, explain the reason for the delay between the making and laying of the instrument.

2. Given that most schemes include overseas investments, explain whether the intention of regulation 9(5)(d) is that there is an amber flag present even if the scheme contains overseas investments that are only conventional low risk overseas investments

2. The Department's response to the Committee's points is set out below.

Background to the Department's response

3. The Regulations in question are a response to calls from the pensions industry for greater powers to intervene in statutory pension transfers and protect pensioners from the risk of scams. The Regulations provide those requested powers, for trustees and scheme managers whose due diligence processes identify a scam risk to intervene to protect pensioners, where before there was a more or less unfettered statutory right to make a transfer. This was being taken advantage of by scammers. Greater detail on the background is set out in the consultation and the Government's response¹.

4. The Regulations were the product of extensive engagement with industry, most notably the Pension Scams Industry Group (PSIG), not only through the formal consultation but throughout the policy development process: with regard to the principles behind the Regulations and also the use of the red and amber flags. The Regulations subsequently produced were built around what the Department was told was largely already happening in the industry by way of due diligence (including by application of the PSIG guide, "Combating Pension Scams: A Code of Best Practice"²) and, as the consultation response makes clear, they are further based on the feedback from industry to the consultation.

5. The Department continued to engage with industry right up to the point the Regulations were made, with drafts of the Regulations being shared with PSIG, The Investing and Saving Alliance and the Association of British Insurers. The Regulations were made in November 2021 to avoid delay in introducing the protections, whilst at the same time keeping industry up to date on their content.

1 <https://www.gov.uk/government/consultations/pension-scams-empowering-trustees-and-protecting-members>.

2 <https://www.plsa.co.uk/Portals/0/Documents/Policy-Documents/2021/Combating-Pension-Scams-A-Code-of-Best-Practice-0421.pdf>.

6. The Regulations included, from the outset of their discussion in summer 2020, as well as in the formal consultation on the draft Regulations in May to June 2021, the amber flag in regulation 9(5)(d) relating to inclusion of overseas investments in the receiving scheme. Overseas investments feature as a key scam risk indicator in the PSIG Code also.³

Response to Question 1

7. In response to question 1, the Department makes three important points on the underlying position in relation to these Regulations. The Department then raises some more general concerns in this area.

8. Firstly, the Department does not regard these Regulations as requiring a “significant update to the processes of trustees and managers”. This is for the reasons outlined above. The Regulations were made in response to requests from trustees and managers. The intention was for the Regulations to impose requirements that reflected the processes which trustees and managers already had in place. There was extensive consultation on the Regulations, both during policy development and on the draft Regulations themselves. One of the key aims of the consultation was to help ensure that the intention to reflect existing processes was met. The Department published an Impact Assessment with the final Regulations, which includes an explanation of the intended impact on the processes of the trustees and managers.

9. For the majority of trustees and managers, the Regulations should therefore result in nothing more than a minimal update to their processes. Given the number of different pension schemes in existence, it is very unlikely that there would be no trustees or managers who are required to do a significant update. But the Department does not think it can properly be said that the Regulations require a significant update to the processes of trustees and managers.

10. Secondly, it is not the case that laying these Regulations earlier would have any impact on trustees or managers in practice. The Department published the draft Regulations for consultation on 14th May 2021. The Department had been working with trustees and managers on the policy behind the Regulations for many months before that. Changes were made to the draft Regulations following consultation, many of which were intended to ensure that the Regulations reflected the processes that trustees and managers already had in place.

11. Trustees and managers have therefore been aware of the proposed changes to processes in these Regulations since before 14th May 2021. The Minister made the Regulations on Wednesday 3rd November in the morning. The earliest they could then have been laid was the afternoon of that same day (provided that had been planned and agreed in advance). The Regulations were in fact laid on Monday 8th November.

12. Given that trustees and managers were aware of the proposals for many months before the Regulations were made, we do not think laying the Regulations 3 working days earlier would have any impact in practice on the ability of the trustees and managers to make any necessary changes to their processes.

13. Thirdly, these are standard private pensions Regulations. Private pensions legislation is inevitably complex and technical. For example, there have been many Acts, including 4

³ Ibid – see pages 20, 39, 61 and 95.

major private pensions Acts in the last 8 years, and detailed Regulations on new aspects of private pensions, such as master trusts, automatic enrolment and climate change. Trustees and managers also have to comply with many Regulations made by other Departments, such as complex Regulations on taxation. Trustees and managers are specialist pensions administrators.

14. Trustees and managers are therefore well used to implementing standard Regulations like these. Further, trustees and managers are used to implementing Regulations which require much more significant changes to their processes than these Regulations.

15. The Department would also welcome guidance on the underlying points raised by the Committee’s question.

16. The Department is aware of the Committee’s concerns about inappropriate delays between making and laying, and appreciates the reasoning behind them. The Department has in the past unfortunately made some inappropriate delays between making and laying on Regulations which breach the 21 day rules and the Committee has reported the Department⁴. The Department was grateful to the Committee for its First Special Report of Session 2017–19 entitled “Transparency and Accountability in Subordinate Legislation”⁵, which provided helpful guidance on delays between making and laying. Paragraph 2.13 of that guidance summarises the position:

2.13 The Committee considers that, as a general rule and unless there are exceptional guidance only circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay. This period is for guidance only. There may be some instances where a period of longer than 10 calendar days is acceptable or instances where a period of less than 10 calendar days is considered to be an unjustifiable delay

17. The Department’s strong view is that it has fully complied with this guidance. There was a gap of 5 calendar days (including a weekend) between making and laying these Regulations, half the indicative 10 calendar days in the guidance. There is nothing to suggest that these Regulations are unusual, complicated, hard to implement etc which justify an especially short gap between making and laying. On the contrary, these are standard private pensions Regulations. As mentioned above, the Regulations do not require significant change to processes, laying earlier would have had no impact in practice on the implementation of the Regulations and the trustees and managers are well used to implementing Regulations like this.

18. If the Committee’s view is that 5 calendar days is an unjustifiable gap between making and laying for these Regulations, which are standard in nature, that would have a major impact for other, similar, Regulations, of which we anticipate there will be many.

19. If 5 calendar days is an unjustifiable gap in these Regulations, that appears to the Department to be a change in the guidance. The Department would be very grateful if the Committee could provide further guidance in such a situation.

4 For example paragraph 1 of the Committee’s Ninth Report of Session 2013–14: <https://publications.parliament.uk/pa/jt201314/jtselect/jtstatin/60/60.pdf>.

5 <https://publications.parliament.uk/pa/jt201719/jtselect/jtstatin/151/151.pdf>.

20. Also, the 21 day rule enables Parliament and the public to consider Regulations before they come into force. The Department has complied with this rule in these Regulations. The Committee’s question asks whether the laying date on these Regulations should have been earlier to give the public longer to consider the Regulations before they come into force. The Department wonders if bringing the laying day forward in this way has a similar effect in practice to extending the 21 day rule. This potentially has important practical consequences for the Department’s legislative processes. The Department also wonders whether it might result in delays to making, and even laying, to avoid having an unacceptable gap between making and laying.

Response to Question 2

21. The Department can confirm that it is not the intention behind regulation 9(5)(d) to capture, as a scam risk indicator within the amber flag created, circumstances where there is in fact low risk of a scam.

22. Consistent feedback from the pensions industry throughout the process has been that one of the main concerns they had about statutory transfers was where there are overseas investments included in the receiving scheme, as such schemes have often been a vehicle for scams. Industry conveyed that scammers will utilise the statutory right to get the victim to push through a transfer, persuading them to do so with promises of unrealistic returns on overseas investments included in the scheme.

23. Some respondents to the formal consultation raised the issue of this amber flag slowing up the transfer process but evidence was not presented as to why transfers to receiving schemes that include overseas transfers should not be considered to present a scam risk; nor were alternative approaches suggested to distinguish overseas investments included in a receiving scheme that are “only conventional low risk overseas investments” from those overseas investments that present a scam risk.

24. Subsequent to the coming into force of the Regulations, the Department has been made aware of a potential issue of too many pension transfers being caught by the amber flag in regulation 9(5)(d). We are actively engaging with industry representatives to try and reach an understanding of the potential issue and the distinction between those overseas investments that present scam risk and those that do not. If there is an issue here, the Department will consider amending the Regulations to avoid the amber flag capturing more pension transfers than is intended, whilst maintaining the policy intent of safeguarding against potential scams facilitated through certain schemes that include overseas investments.

25. Whilst these considerations are underway, the Department would note the following. Firstly, statutory transfers are not prevented by the amber flags, they simply require a pension saver to take scams specific guidance from the Money and Pensions Service (MaPS) before it proceeds. The taking of this guidance will be beneficial for many pension savers and is within the policy aim of the Regulations, to help protect pension savers from scams. Secondly, the Regulations only apply to the statutory right to make a pension transfer and so, in many cases, transferring schemes will still have discretion, within their rules, to permit the transfer to proceed. This means that, where their due diligence indicates “only conventional low risk overseas investments” are included in a receiving

scheme, the transfer may, should the transferring scheme consider it appropriate and safe for it to do so, proceed on an extra statutory basis without the pension saver being referred for MaPS guidance.

Department for Work and Pensions

18 January 2022

Appendix 3

S.I. 2021/1272

National Security and Investment Act 2021 (Prescribed Form and Content of Notices and Validation Applications) Regulations 2021

1. The Committee has asked the Department for Business, Enterprise and Industrial Strategy for a memorandum on the following points:

- 1. Explain why the phrase “national infrastructure sector” is defined in regulation 2 when that phrase is not used in the instrument.*
- 2. Explain the difference in meaning of “national infrastructure” in paragraph 1 of Schedule 1 and paragraph 25 of Schedule 2 and “critical national infrastructure” in paragraph 29 of Schedule 3.*

2. The two points highlighted by the Committee are related. The intention was that the list of areas set out in paragraph 21 of Schedule 1, paragraph 25 of Schedule 2 and paragraph 29 of Schedule 3 should refer to “national infrastructure sector”, which is defined in regulation 2. We are grateful to the Committee for bringing this to our attention and will amend the Regulations to rectify this at the earliest opportunity.

Department for Business, Enterprise and Industrial Strategy

14 January 2022

Appendix 4

S.I. 2021/1276

Non-Domestic Rating (Discretionary Relief) (Amendment) (England) Regulations 2021

1. The Committee has asked the Department for Levelling Up, Housing and Communities for a memorandum on the following point:

By way of amplification of paragraph 3.2 of the Explanatory Memorandum, identify the international agreements referred to and explain precisely why the instrument could not have been made earlier in order to comply with the 21-day rule.

2. The Regulations apply in respect of any international agreement to the extent that it is given legal effect in the law of England and Wales. This includes agreements as to the UK's international subsidy control commitments such as can be found in the EU-UK Trade and Cooperation Agreement, the Protocol on Ireland and Northern Ireland in the EU-UK Withdrawal Agreement, and future trade agreements signed with other countries.

3. Although the Government has been working towards the designation of Freeports for several months, the issue which is explained in paragraph 7.1 of the Explanatory Memorandum was identified because of work the Department are doing to implement the Business Rates Review, the final report of which was published at the Budget on 27 October 2021.

4. As part of the work on the Business Rates Review, the Department has been considering the suitability of the rules governing discretionary rate relief under section 47 of the Local Government Finance Act 1988. The issue set out in paragraph 7.1 was identified recently as part of that work and could next arise in relation to one of the rate relief schemes associated with Freeports. Given that the first group of Freeports were to be designated on 19 November 2021, the Department felt it had to act quickly.

5. The Department understands that this is not in compliance with the 21-day rule for statutory instruments. Had the need to act been identified earlier then the Department would have ensured that the instrument complied with the rule, but it was necessary not to do so in these exceptional circumstances. The Department regrets and apologises that it was unable to comply with the 21-day rule.

Department for Levelling Up, Housing and Communities

18 January 2022

Appendix 5

S.I. 2021/1310

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Consequential Provisions) Order 2021

1. The Committee has asked the Office of the Secretary of State for Scotland for a memorandum on the following point:

Explain why article 2 makes no provision for a necessary link between the activities of a charity and the care of children at the time of abuse (whether by way of addition to the list of scheme contributors under the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, or otherwise).

2. Article 2 of the Order applies where a charity subject to the control of the High Court in England and Wales makes a financial contribution to the Scottish Ministers for the purpose of redress payments being made under Part 4 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the 2021 Act”)⁶

3. As set out in the Explanatory Memorandum to the Order (paragraph 6.3), section 14 of the 2021 Act makes provision to enable the making of financial contributions to the Scottish Ministers towards the funding of redress payments under the scheme by organisations responsible for the care of children at the time they were abused. Many of those organisations are constituted as charities.

4. Where the Scottish Ministers are satisfied that an organisation has made or agreed to make a fair and meaningful financial contribution towards the funding of redress payments under the 2021 Act and, in so doing, the organisation acknowledges the wrongfulness of, and the harm caused by, the historical child abuse in relevant care settings in Scotland, the organisation will be added to the list of scheme contributors established and maintained under section 14 of the 2021 Act.⁷

5. As also set out in paragraph 6.3 of the Explanatory Memorandum, section 17 of the 2021 Act provides that where Scottish charities make financial contributions to the scheme, these are treated as being in furtherance of the charity’s charitable purposes, consistent with the charity’s governing documents and providing public benefit. In addition, the making of a financial contribution to the scheme will be treated for all purposes as not being contrary to the interest of the charity, and as being within the power exercisable by the charity trustees.

6. Article 2 of this Order therefore makes equivalent provision in consequence of section 17 of the 2021 Act in relation to charities registered in England and Wales.

7. Article 2 only applies to those charities in England and Wales which have made a financial contribution under the 2021 Act. The incentive for making a financial contribution is to be included in the list of scheme contributors established and maintained under section

⁶ [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁷ See also paragraph 9 of the Policy Memorandum for the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill prior to its enactment: [policy-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf \(parliament.scot\)](https://www.parliament.scot/policy-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf)

14 of the 2021 Act. An organisation which is added to the list of scheme contributors gains the benefit of the waiver which recipients of redress payments must sign in accordance with section 46 of the 2021 Act. The waiver prevents the recipient of a redress payment under the 2021 Act from bringing relevant civil proceedings (as defined in section 46(6) of the 2021 Act) against a scheme contributor. Consequently, we would suggest that only those organisations that are at risk of having relevant civil proceedings brought against them are likely to make financial contributions to the scheme. The contribution must be made before an organisation can be assessed for the purposes of becoming a scheme contributor under section 14 of the 2021 Act, and so charities must have sufficient vires to make the contribution prior to that assessment.

8. We therefore consider that this context provides sufficient nexus between the provisions of Article 2 and the historical abuse that the 2021 Act seeks to provide redress for.

Office of the Secretary of State for Scotland

18 January 2022

Appendix 6

S.I. 2021/1463

Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No.26) Regulations 2021

1. The Committee has asked the Department of Health and Social Care for a memorandum on the following point:

In regulation 4(3) (inserted paragraph (a)), explain why P can only cease to self-isolate when notified that “the result of the day 2 test....is negative”, but a relevant child or a person who is unable to take a test due to a disability can cease to self-isolate when an accompanying person is notified “of the result of that test” (apparently irrespective of the result).

2. Paragraph (a) was inserted by regulation 4(3) to provide a mechanism for release from self-isolation for people who would not be required by the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 (S.I. 2021/582) (“the ITOLR”) to take a day 2 test, namely children under the age of 5 and people who are unable to take a test because of a disability and who have a reasonable excuse for failing to take a test by virtue of regulation 19(1)(c) and 19(4)(b)(i) (“the groups”).

3. The amendment corrected an anomaly that arose from the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) (No. 21) Regulations 2021 (S.I. 2021/1339). Without the change to regulation 4(3)(a), the groups would be unable to be released from the obligation to self-isolate on arrival for the duration of 14 days.

4. Regulation 4(3)(a) balances the interests in a proportionate way of the individuals in the groups with the public health purpose of self-isolation more generally. The groups would be released from self-isolation irrespective of the result of a test, but only because the public health purpose of self-isolation would be achieved through the requirements placed upon them as a person in the same household or close contact of the person who had taken the day 2 test by virtue of regulation 3J(6)-(8) or paragraph 3 of Schedule 8 to the ITOLR.

5. The relevant provision has now been omitted by regulation 8(2) of the Health Protection (Coronavirus, International Travel and Operator Liability) (England) (Amendment) Regulations 2022 (S.I. 2022/11). Those Regulations removed the requirement on eligible travellers arriving in England to self-isolate until they had a negative test result.

Department of Health and Social Care

18 January 2022

Formal minutes

Wednesday 26 January 2022

Virtual meeting

Members present:

Jessica Morden, in the Chair

Lord Beith

Lord Chartres

Dr James Davies

Baroness D’Souza

Baroness Gale

Lord Haskel

John Lamont

Baroness Newlove

Richard Thomson

Liz Twist

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 6.2 read and agreed to.

Annex agreed to.

Papers were appended to the Report as Appendices 1 to 6.

Resolved, That the Report be the Twenty-Second Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Adjournment

Adjourned till Wednesday 2 February at 3.40 p.m.